

ESTTA Tracking number: **ESTTA687590**Filing date: **08/04/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Woodbolt Distribution, LLC d/b/a Nutrabolt
Granted to Date of previous extension	08/05/2015
Address	3891 S. Traditions Drive Bryan, TX 77807 UNITED STATES
Attorney information	Craig M. Spierer Harris Beach, PLLC 333 Earle Ovington Blvd.Suite 901 Uniondale, NY 11553 UNITED STATES cspierer@harrisbeach.com Phone:516-880-8379

Applicant Information

Application No	86443698	Publication date	04/07/2015
Opposition Filing Date	08/04/2015	Opposition Period Ends	08/05/2015
Applicant	Axo Internatioanal, LLC #224 Fort Myers, FL 33907 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2014/10/01 First Use In Commerce: 2014/10/01
All goods and services in the class are opposed, namely: Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	4075985	Application Date	08/30/2010
Registration Date	12/27/2011	Foreign Priority Date	NONE
Word Mark	CELLUCOR		

Design Mark	<h1>Cellucor</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2001/05/05 First Use In Commerce: 2001/12/10 Dietary and nutritional supplements; Dietary supplements; Nutritional supplements

U.S. Registration No.	4470908	Application Date	07/01/2013
Registration Date	01/21/2014	Foreign Priority Date	NONE
Word Mark	CELLUCOR		
Design Mark			
Description of Mark	The mark consists of a small solid circle surrounded by a larger circle which has been broken into four parts with the word "CELLUCOR" to the right of the circles.		
Goods/Services	Class 005. First use: First Use: 2001/05/05 First Use In Commerce: 2001/12/10 Dietary and nutritional supplements		

U.S. Registration No.	4606966	Application Date	08/02/2013
Registration Date	09/16/2014	Foreign Priority Date	NONE
Word Mark	CELLUCOR ALPHA-AMINO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2013/09/15 First Use In Commerce: 2013/09/15 Dietary and nutritional supplements containing amino acids		

U.S. Registration No.	4076246	Application Date	01/04/2011
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Registration Date	12/27/2011	Foreign Priority Date	NONE
Word Mark	CELLUCOR C4 EXTREME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2010/11/01 First Use In Commerce: 2010/12/15 Dietary and nutritional supplements; Dietary and nutritional supplements for endurance sports; Dietary and nutritional supplements used for weight loss; Dietary supplements; Dietary supplements for human consumption; Dietary supplements in the nature of weight loss powders; Nutraceuticals for use as a dietary supplement; Nutritional supplements; Powdered fruit-flavored dietary supplement drink mix; Powdered nutritional supplement drinkmix; Weight management supplements		

Attachments	85118901#TMSN.png(bytes) 85974175#TMSN.png(bytes) 86027949#TMSN.png(bytes) 85210273#TMSN.png(bytes) HBNYC-#824234-v1-CELLUPURE-_Opposition.PDF(2996997 bytes) HBNYC-#824235-v1-CELLUPURE_-_Exhibits.PDF(3784030 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Craig Spierer/
Name	Craig M. Spierer
Date	08/04/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 86/443,698

Filed: November 4, 2014

For the Mark: CELLUPURE

Published in the Official Gazette: on April 7, 2015

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WOODBOLT DISTRIBUTION, LLC	:	
d/b/a NUTRABOLT	:	
	:	
Opposer,	:	Opposition No.
	:	
-against-	:	<u>NOTICE OF OPPOSITION</u>
	:	
AXO INTERNATIONAL, LLC	:	
	:	
Applicant,	:	
-----X	:	

Opposer Woodbolt Distribution, LLC d/b/a Nutrabolt (“Opposer”), a Delaware limited liability company with a principal place of business of 3891 South Traditions Drive, Bryan, Texas 77807, respectfully avers that it will be damaged by the registration of United States Trademark Application Serial No. 86/443,698, as filed with the United States Patent and Trademark Office (“USPTO”) on November 4, 2014 by Axo International, LLC (“Applicant”) for the trademark CELLUPURE in connection with “Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes” in International Class 005 (hereinafter the “CELLUPURE Application”). Having been granted extensions of time to oppose up to and including August 5, 2015, Opposer hereby opposes the filing and registration of the CELLUPURE Application. The grounds for opposition, are as follows:

1. Opposer is a well-known and highly regarded dietary and nutritional supplement

company, which has been engaged in the worldwide manufacture, marketing, distribution and sale of dietary and nutritional supplements and related products under its award-winning CELLUCOR® brand since as early as 2001.

2. Opposer is the owner of numerous registered and pending applications for the mark CELLUCOR® on its own or in connection with other words and/or symbols throughout the world as set forth herein.

3. In addition to numerous international registrations, Opposer is the owner of the following U.S. federal registrations for CELLUCOR® in connection with dietary and nutritional supplements in International Class 005: CELLUCOR® (Registration No. 4,075,985), CELLUCOR® and Design (Registration No. 4,470,908), CELLUCOR ALPHA-AMINO® (Registration No. 4,606,966) and CELLUCOR C4 EXTREME® (Registration No. 4,076,246) (collectively, the “Registered Marks”).

4. In addition to numerous international applications, Opposer is the owner of the following pending U.S. applications for CELLUCOR® in International Class 005: CELLUCOR COR-ESSENTIALS™ (Serial No. 85/692,477), CELLUCOR COR-SERIES™ (Serial No. 85/692,407), and CELLUCOR PERFORMANCE ESSENTIALS™ (Serial No. 85/596,437) (Collectively, the “Pending Marks”). The “Pending Marks” and the “Registered Marks” shall hereinafter be referred to collectively as the “CELLUCOR Marks”.

5. A copy of Opposer’s valid and subsisting U.S. federal registrations, along with copies of TSDR printouts for each are attached hereto as Exhibit A. Opposer hereby gives notice in accordance with Trademark Rules of Practice 2.122(d)(2) that it will rely upon these registrations as evidence in this proceeding, and a status copy showing present title will be introduced into evidence by Opposer. Further, these registrations are valid, subsisting and in full force and effect

and serve as evidence of Opposer's exclusive right to use the marks in commerce on or in connection with the goods identified in the registrations provided by 15 U.S.C. §1155(a).

6. Opposer's line of products sold under the CELLUCOR Marks are distributed throughout the world, and are readily available to consumers for purchase through its website, www.cellucor.com, brick and mortar stores as well as prominent industry retailers and online retailers, including but not limited to GNC, The Vitamin Shoppe and Bodybuilding.com.

7. Opposer's products under the CELLUCOR Marks are advertised and/or promoted worldwide in many of the leading trade magazines, publications and websites including but not limited to such industry leaders as *Fitness First*, *Men's Fitness*, *Muscle & Performance*, *Muscle & Strength* and on Bodybuilding.com.

8. Opposer and its CELLUCOR Marks are also prominently featured at all major industry trade shows such as The Olympia Fitness and Performance Expo and the Arnold Sports Festival Expo.

9. Opposer's products under the CELLUCOR Marks are widely acclaimed and have won numerous awards to cement their status including several Bodybuilding.com Supplement Awards, including most recently Pre-workout Supplement of the year in 2013 and 2014, and GNC Vendor Awards for 'Vendor of the Year' and Best Product Innovation in 2013.

10. Opposer has spent considerable time, money and effort developing, advertising and promoting the CELLUCOR Marks and its associated products. As a result of substantial sales and widespread promotion of such marks and products, the CELLUCOR Marks have come to symbolize valuable goodwill, which belongs to Opposer. The CELLUCOR Marks have become well-known by the general public and in relevant industries and are recognized and relied upon as identifying Opposer's goods from the goods of others. As a result of Opposer's efforts, the

CELLUCOR Marks have become famous within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. §1125(c).

11. On November 4, 2014, Applicant filed the CELLUPURE Application for the mark CELLUPURE in International Class 005 for “Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes” alleging a first use of October 1, 2014 (the “CELLUPURE Mark”).

12. The CELLUPURE Mark was purportedly first used in commerce approximately thirteen years after Opposer’s first use of the CELLUCOR Mark.

13. Opposer has priority because Opposer has continuously used the CELLUCOR Mark in connection with its goods prior to the date which Applicant claims it first used the CELLUPURE Mark in commerce.

14. The CELLUPURE Mark is substantially similar in sight, meaning, and overall commercial impression to Opposer’s CELLUCOR Mark. Additionally, the marks are nearly identical in sound. Both marks contain three syllables and rhyme with one another, which when pronounced makes them difficult to differentiate from one another.

15. The CELLUPURE Mark is used in connection with goods which are identical and/or substantially similar to those used by Opposer in connection with the CELLUCOR Mark.

16. The products associated with the CELLUPURE Mark are likely promoted and distributed in the same channels of trade as those associated with the CELLUCOR Mark, which due to the similarity of the marks would likely give rise to the mistaken belief that the CELLUPURE Mark emanates from or is some way affiliated with Opposer. Opposer and the general public would thereby be injured by the granting of a registration for Applicant’s CELLUPURE Mark.

17. Further, the granting of a registration for Applicant's CELLUPURE Mark would provide Applicant with at least a prima facie exclusive right to use the CELLUPURE Mark and would therefore additionally damage and cause injury to Opposer.

18. Registration of the CELLUPURE Mark should be refused pursuant to Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. §1052(d), on the grounds that the CELLUPURE Mark so resembles the CELLUCOR Mark as to cause confusion, mistake and/or deception to the detriment of Opposer.

19. Applicant's CELLUPURE Mark is substantially similar to Opposer's CELLUCOR Mark such that it would impair the distinctiveness of Opposer's CELLUCOR Marks. Opposer would additionally be damaged by registration of the CELLUPURE Application because the grant of such registration would cause dilution of Opposer's famous CELLUCOR Mark and will give color of exclusive statutory right to Applicant which would serve to minimize the prior and superior rights of Opposer.

20. Additionally, Applicant's CELLUPURE Mark if registered is likely to cause dilution by blurring of Opposer's famous CELLUCOR Mark within the meaning of 15 U.S.C. 1125(c) and therefore registration should be refused.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's CELLUPURE Mark and requests that its opposition to Serial No. 86/443,698 be sustained and said registration be denied.

Dated August 4, 2015

Respectfully submitted,

Harris Beach, PLLC

By: 

Craig M. Spierer
333 Earle Ovington Boulevard
Suite 901
Uniondale, New York, 11553

Attorneys for Opposer
Woodbolt Distribution, LLC
d/b/a Nutrabort

Certificate of Service

It is hereby certified, that I am over the age of eighteen years old and not a party to this action, and that on August 4, 2015 I caused a true and correct copy of the foregoing Notice of Opposition to be served upon the Applicant's Correspondent of Record at the below address by placing it in a sealed envelope with postage thereon fully prepaid, in the United States mail:

AXO International, LLC
1591 Hayley Lane, #203
Fort Myers, Florida 33907

Date: August 4, 2015



Craig M. Spierer

EXHIBIT A

United States of America
United States Patent and Trademark Office

Cellucor

Reg. No. 4,075,985

Registered Dec. 27, 2011

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

WOODBOLT DISTRIBUTION (TEXAS LIMITED LIABILITY COMPANY)
715 NORTH MAIN ST.
BRYAN, TX 77803

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS; DIETARY SUPPLEMENTS; NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-5-2001; IN COMMERCE 12-10-2001.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-118,901, FILED 8-30-2010.

TRACY FLETCHER, EXAMINING ATTORNEY



David S. Kybas

Director of the United States Patent and Trademark Office



United States Patent and Trademark Office

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Cellucor

Word Mark**CELLUCOR****Goods and Services**

IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary supplements; Nutritional supplements. FIRST USE: 20010505. FIRST USE IN COMMERCE: 20011210

Standard Characters Claimed**Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 85118901**Filing Date** August 30, 2010**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** October 11, 2011**Registration Number** 4075985**Registration Date** December 27, 2011**Owner** (REGISTRANT) Woodbolt Distribution LIMITED LIABILITY COMPANY TEXAS 3891 S. Traditions Drive Bryan TEXAS 77807

(LAST LISTED OWNER) WOODBOLT DISTRIBUTION, LLC DBA NUTRABOLT LIMITED LIABILITY COMPANY DELAWARE 3891 S. TRADITIONS DRIVE BRYAN TEXAS 77807

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record Craig M. Spierer**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE

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United States of America

United States Patent and Trademark Office

CELLUCOR

Reg. No. 4,470,908

Registered Jan. 21, 2014

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

WOODBOLT DISTRIBUTION, LLC (TEXAS LIMITED LIABILITY COMPANY)
715 NORTH MAIN STREET
BRYAN, TX 77803

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-5-2001; IN COMMERCE 12-10-2001.

OWNER OF U.S. REG. NOS. 4,075,985 AND 4,076,246.

THE MARK CONSISTS OF A SMALL SOLID CIRCLE SURROUNDED BY A LARGER CIRCLE WHICH HAS BEEN BROKEN INTO FOUR PARTS WITH THE WORD "CELLUCOR" TO THE RIGHT OF THE CIRCLES.

SER. NO. 85-974,175, FILED 7-1-2013.

SOPHIA S. KIM, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
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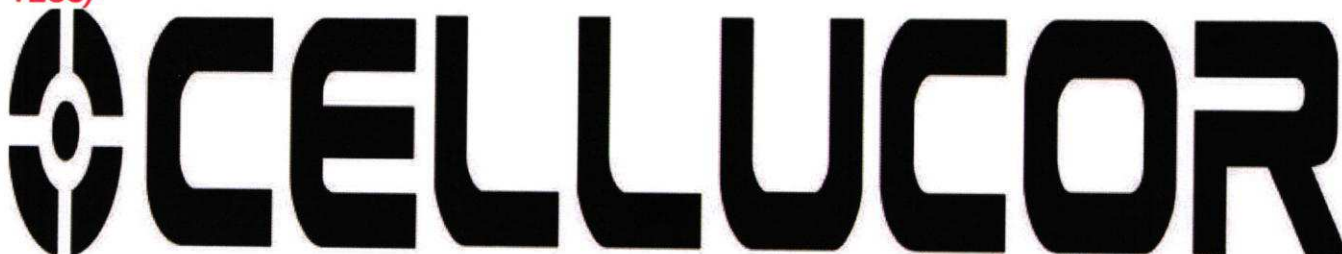
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Word Mark	CELLUCOR
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements. FIRST USE: 20010505. FIRST USE IN COMMERCE: 20011210
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.01.03 - Circles, incomplete (more than semi-circles); Incomplete circles (more than semi-circles) 26.01.21 - Circles that are totally or partially shaded.
Serial Number	85974175
Filing Date	July 1, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	November 5, 2013
Registration Number	4470908
Registration Date	January 21, 2014
Owner	(REGISTRANT) Woodbolt Distribution, LLC LIMITED LIABILITY COMPANY TEXAS 3891 S. Traditions Drive Bryan TEXAS 77807 (LAST LISTED OWNER) WOODBOLT DISTRIBUTION, LLC DBA NUTRABOLT LIMITED LIABILITY COMPANY DELAWARE 3891 S. TRADITIONS DRIVE BRYAN TEXAS 77807
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Craig M. Spierer
Prior Registrations	4075985;4076246
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of a small solid circle surrounded by a larger circle which has been broken into four parts with the word "CELLUCOR" to the right of the circles.
Type of Mark	TRADEMARK
Register	PRINCIPAL

**Live/Dead
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United States of America

United States Patent and Trademark Office

CELLUCOR ALPHA-AMINO

Reg. No. 4,606,966

Registered Sep. 16, 2014

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

WOODBOLT DISTRIBUTION, LLC (TEXAS LIMITED LIABILITY COMPANY)
715 N. MAIN STREET
BRYAN, TX 77803

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS CONTAINING AMINO ACIDS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 9-15-2013; IN COMMERCE 9-15-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 4,075,985.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ALPHA-AMINO", APART FROM THE MARK AS SHOWN.

SN 86-027,949, FILED 8-2-2013.

SOPHIA S. KIM, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office



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CELLUCOR ALPHA-AMINO

Word Mark CELLUCOR ALPHA-AMINO
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements containing amino acids. FIRST USE: 20130915. FIRST USE IN COMMERCE: 20130915
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86027949
Filing Date August 2, 2013
Current Basis 1A
Original Filing Basis 1B
Published for Opposition November 5, 2013
Registration Number 4606966
Registration Date September 16, 2014
Owner (REGISTRANT) Woodbolt Distribution, LLC LIMITED LIABILITY COMPANY TEXAS 3891 S. Traditions Drive Bryan TEXAS 77807

(LAST LISTED OWNER) WOODBOLT DISTRIBUTION, LLC DBA NUTRABOLT LIMITED LIABILITY COMPANY DELAWARE 3891 S. TRADITIONS DRIVE BRYAN TEXAS 77807
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Craig M. Spierer
Prior Registrations 4075985

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ALPHA-AMINO" APART
FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

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United States of America

United States Patent and Trademark Office

Cellucor C4 Extreme

Reg. No. 4,076,246

Registered Dec. 27, 2011

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

WOODBOLT DISTRIBUTION (TEXAS LIMITED LIABILITY COMPANY)
715 NORTH MAIN ST.
BRYAN, TX 77803

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS; DIETARY AND NUTRITIONAL SUPPLEMENTS FOR ENDURANCE SPORTS; DIETARY AND NUTRITIONAL SUPPLEMENTS USED FOR WEIGHT LOSS; DIETARY SUPPLEMENTS; DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION; DIETARY SUPPLEMENTS IN THE NATURE OF WEIGHT LOSS POWDERS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT; NUTRITIONAL SUPPLEMENTS; POWDERED FRUIT-FLAVORED DIETARY SUPPLEMENT DRINK MIX; POWDERED NUTRITIONAL SUPPLEMENT DRINK MIX; WEIGHT MANAGEMENT SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 11-1-2010; IN COMMERCE 12-15-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-210,273, FILED 1-4-2011.

VERNA BETH RIRIE, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office



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Cellucor C4 Extreme

**Word Mark
Goods and
Services****CELLUCOR C4 EXTREME**

IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary and nutritional supplements for endurance sports; Dietary and nutritional supplements used for weight loss; Dietary supplements; Dietary supplements for human consumption; Dietary supplements in the nature of weight loss powders; Nutraceuticals for use as a dietary supplement; Nutritional supplements; Powdered fruit-flavored dietary supplement drink mix; Powdered nutritional supplement drink mix; Weight management supplements. FIRST USE: 20101101. FIRST USE IN COMMERCE: 20101215

**Standard
Characters
Claimed****Mark Drawing
Code** (4) STANDARD CHARACTER MARK**Serial Number** 85210273**Filing Date** January 4, 2011**Current Basis** 1A**Original Filing
Basis** 1A**Published for
Opposition** October 11, 2011**Registration
Number** 4076246**Registration
Date** December 27, 2011**Owner** (REGISTRANT) Woodbolt Distribution LIMITED LIABILITY COMPANY TEXAS 3891 S. Traditions Drive Bryan TEXAS 77807

(LAST LISTED OWNER) WOODBOLT DISTRIBUTION, LLC DBA NUTRABOLT LIMITED
LIABILITY COMPANY DELAWARE 3891 S. TRADITIONS DRIVE BRYAN TEXAS 77807

**Assignment
Recorded** ASSIGNMENT RECORDED
**Attorney of
Record** Craig M. Spierer
Type of Mark TRADEMARK
Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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